

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. Application No. 09/364,315  
Attorney Docket No. ST9-99-078 / A4891

## **REMARKS**

### **I. Introduction**

Applicant adds new claims 50-55. Therefore, by this Amendment, claims 1-55 are all the claims pending in the application. Examined claims 1-49 are rejected. Specifically, claims 1-44 (sic: 1-49) stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Heath et al., U.S. Patent No. 5,553,239 (hereinafter "Heath") in view of Jones et al., U.S. Patent No. 6,282,561 (hereinafter "Jones").

Applicant traverses the rejection of claims 1-49 as follows.

### **II. Claim Rejections -- 35 U.S.C. § 103(a)**

#### **Claims 1, 11, and 21**

Claims 1, 11 and 21 are directed to methods, apparatuses and articles of manufacture, respectively, for determining access to a system. These claims recite, for each of a plurality of requests, determining whether to allow access to the system using an access vector to identify an available access object.

Heath is relied on for receiving one or more requests to access a system, but the Examiner acknowledges that Heath fails to teach or suggest the recited features of "for each request, determining whether to allow access to the system using an access vector to identify an available access object" (*see* claims 1, 11 and 21). Jones is relied upon to fulfill these deficiencies by teaching the recited features.

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In acknowledging the aforementioned deficiencies of Heath, the Examiner concludes that "the artisan [of ordinary skill in the art, at the time of Applicant's invention] would have been motivated to look into the related network application access art for potential methods and systems for implementing the [features of] determining whether to allow access to the system using [an] access vector to identify an available access object" (*see* Office Action, ¶ 6).

Applicant respectfully submits that the Examiner fails to provide a reasonable suggestion or motivation, from the references themselves or the knowledge generally available to one of ordinary skill in the art (*see* MPEP § 2143.01), for combining Heath and Jones, beyond alleging that Heath fails to teach or suggest various features of Applicant's claimed invention. This type of hindsight analysis is simply not permissible (*see* Office Action: page 2, last line to page 3, first three lines).

Indeed, the Federal Circuit has recently noted that the USPTO is held to a *rigorous* standard when trying to show that an invention would have been obvious in view of the combination of two or more references. *See, In re Sang Su Lee*, 2002 U.S. App. LEXIS 855, \*10 (Fed. Cir. 2002), *citing, e.g., In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references."). The Federal Circuit goes on to emphasize that the "need for specificity pervades this authority." *In re Sang Su Lee* at \*10-\*11 (emphasis added) (*citing In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("particular findings must be made as to the reason the skilled artisan, with no

knowledge of the claimed invention, would have selected these components for combination in the manner claimed’’)).

Applicant respectfully submits that the current grounds of rejection do not satisfy the Federal Circuit’s standard for demonstrating that the claimed invention would have been obvious in view of the combination of Heath and Jones.

Specifically, Heath describes a server architecture for connecting to a plurality of remote client computers, each seeking access to applications resident on the server (Heath: Abstract). Heath describes granting a connection to a client by using conventional username/password authentication and validating requests for access to an application program based upon a subscriber privilege level associated with the client (Heath: claims 1-3).

Conversely, Jones describes a resource management mechanism for ensuring that real-time application programs running on a single machine or a set of machines exhibit predictable behavior (Jones: Abstract). To this end, a resource planner is provided in the computer system for planning resource allocation (Jones: col. 1, lines 37-50). The resource planner includes a policy module for implementing a policy for arbitrating amongst requests to reserve resources (*Id.*). When a request is received at the resource planner for a program to reserve a resource, the resource planner is used to determine whether to grant the request or not (*Id.*).

Thus, Jones relates to arbitrating among requests by applications to reserve resources, *i.e.*, a limited hardware or software quantity that is provided by a machine, such as CPU time, memory capacity, I/O bus bandwidth, and network bandwidth (Jones: col. 4, lines 9-13 and 35-39). In Jones, real-time application programs know what resources, as well as how much of

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those resources, they need to have to run properly and predictably (Jones: col. 5, lines 59-63).

Thus, the applications attempts to reserve the resources it needs (Jones: col. 8, lines 41-58).

Heath and Jones are fundamentally different and the Examiner fails to provide a reasonable suggestion, absent impermissible hindsight, for combining their teachings. Indeed, Heath is not related to the reservation of necessary resources by real-time applications. To the contrary, as noted above, Heath relates to remote clients that access applications residing on a server (Heath: Abstract). Furthermore, in Heath, if it is determined that a maximum number of clients are logically connected to an instance of an application on the server, a new instance of the application is started (Heath: col. 4, lines 22-37).

Consequently, the Examiner's allegation that "it would have been obvious to one of ordinary skill in the art to combine the teachings of Heath of clients seeking access to applications resident on the server with Jones' teachings of managing access to a resource, for the purpose of ensuring that the resources that are required to ensure timely delivery of the data are guaranteed to the activity that is associated with delivering the data" evidences impermissible hindsight on the part of the Examiner. Indeed, there does not appear to be any suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. For example, Heath already describes an approach of distributing tasks to different functional modules in a manner that promotes the efficiency and ready accommodation of large numbers of users without processing delays (Heath: col. 3, lines 53-57), which does not require resource reservation requests or arbitration among such requests.

For at least the above reasons, Applicant submits that the Examiner has failed to establish a *prima facie* case of obviousness by demonstrating some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

However, even assuming *ad arguendo* that a valid suggestion or motivation exists for combining the references, the combination of Heath in view of Jones still fails to teach or suggest the various features of the claimed invention. For example and not by way of limitation, the combination fails to teach or suggest "for each request, determining whether to allow access to the system using an access vector to identify an available access object". As noted above, the Examiner acknowledges that Heath fails to teach or suggest these features of the claimed invention, but alleges that Jones make up for the acknowledged deficiencies of Heath.

In particular, the Examiner (*citing, e.g.,* Jones: col. 2, lines 32-39; Fig. 2) implies that the resource planner of Jones teaches the recited features. As noted above, Jones relates to real-time applications requesting the reservation of resources needed by the application to run properly (Jones: col. 5, lines 59-63). If the resource planner does not grant an activity's (*e.g.,* an application's) request for reserving the requested quantity of resources (Jones: Fig. 2, NO at step 38), the resource planner instead informs the activity of the quantities of the requested resources that are available (Jones: Fig. 2, step 42). Thus, the activity can thereafter decide whether the available resources are acceptable (Jones: Fig. 2, step 44). If the available resources are not acceptable, the activity terminates (Jones: col. 8, lines 56-58).

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Requesting that resources necessary for proper execution of a real-time application be reserved, as described in Jones, does not teach or suggest "for each request [to access a system], determining whether to allow access to the system using an access vector to identify an available access object", as recited in claim 1 (*see also* claims 11 and 21). Instead of deciding whether to allow access to a system by using an access vector to identify an available access object, Jones involves attempting to reserve an acceptable quantity of resources, as needed by a real-time application to run properly and predictably (Jones: col. 5, lines 59-63).

For at least the above exemplary reasons, claims 1, 11 and 21 are not rendered obvious by a reasonable combination, if any, of Heath and Jones.

Claims 2-10, 12-20, 22-30 and 45-47

Consequently, claims 2-10, 12-20, 22-30 and 45-47 are patentable over a reasonable combination, if any, of Heath and Jones at least by virtue of their dependency.

Claims 31 and 38

Claim 31 recites, *inter alia*, "receiving one or more requests to access a system" and "for each request, determining whether to allow access to the system using an access vector to identify an available access object" (*see also* claim 38). Consequently, claims 31 and 38 are patentable over a reasonable combination, if any, of Heath and Jones based on a rationale analogous to that provided above for claims 1, 11 and 21.

Furthermore, claim 31 also recites that "only one request at a time uses the access vector" (*see also* claim 38). Neither Heath nor Jones (alone or in combination) teach or suggest this additional recited feature.

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Claims 32-37, 39-44 and 48-49

Consequently, claims 32-37, 39-44 and 48-49 are patentable over a reasonable combination, if any, of Heath and Jones at least by virtue of their dependency.

**III. New Claims 50-55**

Applicant adds new claims 50-55. Support for new claims 50, 52 and 54 can be found at least in Applicant's Specification at page 9, lines 7-17. Support for new claims 51, 53 and 55 can be found at least in Applicant's Specification at page 11, lines 20-27.

New claims 50, 52 and 54 are patentable at least because the applied references (alone or in combination) fail to teach or suggest that "a number of available access indicators corresponds to a number of the simultaneous accesses permitted by the system at any given time".

Additionally, new claims 51, 53 and 55 are patentable at least by virtue of their dependency.

**IV. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

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Respectfully submitted,



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Date: July 1, 2003



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**APPENDIX**

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE CLAIMS:**

**Claims 50-55 are added as new claims.**